IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5173 of 1995

with

FIRST APPEAL No 115 of 1994

with

FIRST APPEAL No 998 of 1994

with

FIRST APPEAL No 1017 to 1025 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

and

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITON OFFICER

Versus

RABARI MAGAN CHEHARA

Appearance:

MR SP SEN AGP for Petitioners-State of Gujarat

MS PJ DAVAWALA for Petitioners-Union of India

MR VIPUL S MODI for Respondents

CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE N.G.NANDI

Date of decision: 21/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. All these appeals are required to be disposed of by this common judgment and award as they are arising out of the impugned common judgment and award dated 16.6.1992 passed by the learned District Judge, Banaskantha at Palanpur in Land Acquisition Case No.159/90 and other 39 cases.

#. In all these cases, the lands in question were acquired for the public purpose of construction of Deesa Air Field. In First Appeal No.5173/95 lands of village Kamoda village were acquired. In First Appeal No.115/94 lands of Chekara were acquired and in all other First Appeals lands of Jakol village were acquired. Notification under Section 4 was published on 24.9.1986 followed by notification under Section 6 on 21.1.1987. Special Land Acquisition Officer passed the award under Section 11 on 24.3.1988 awarding Rs.1/= for irrigated lands and 0.70 ps. for non-irrigated lands against claim of respondents-claimants for Rs.20/= per sq.mtr. for irrigated as well as nonirrigated lands. In the references filed before the Reference Court, the learned Judge by his impugned common judgment and award dated 16.6.1992 awarded additional sum of Rs.8/= for irrigated land and Rs.8.30 ps. for nonirrigated lands. Thus, total sum of Rs.9/= per sq.mtr. was awarded by the Reference Court for irrigated and nonirrigated lands. The learned Judge has awarded 6% of additional compensation as severance charges and 30% solatium. He also held that the claimants are also entitled to the interest and additional compensation @9% p.a. from the date of taking over possession up to one year and, thereafter the interest @15% p.a. till the amount is recovered with proportionate costs. However, the learned

Judge ordered that 5% of Government share shall be deducted only in cases of the lands which are of new tenure.

#. Learned AGP Mr.Sen appearing for the appellant No.1 and Ms.Dawavala appearing for respondent No.2 acquiring body submitted that the learned Judge was in error in awarding additional sum of Rs.8.30 ps. for nonirrigated lands and Rs.8/= per sq.mtr. for irrigated lands, in all awarding Rs.9/- per sq.mtr. for both irrigated and nonirrigated land. They submitted that the point in question is almost concluded by the Division Bench of this court delivered in First Appeal No.2091 of 1993 decided on 15.3.1996 wherein the Division Bench of this court has reduced the amount to Rs.7/= per sq.mtr. for all the lands. They, therefore, submitted that all these appeals are required to be partly allowed and respondents-claimants are required to be awarded total amount of Rs.7/= per sq.mtr.

#. This could not be objected to by learned counsel Shri Modi appearing for the claimants-respondents in all these appeals. In fact, Mr.Modi had to concede that all these matters are clearly covered against them by the aforesaid judgment of the Division Bench of this court, which has been confirmed by the Hon'ble Supreme Court by dismissing SLP filed against that judgment.

#. In view of the above, all these appeals are partly allowed in terms of the common judgment delivered by the Division Bench of this court (Coram : N.J.Pandya and A.R.Dave, J.J.) on 16.3.1996 in First Appeal No.2091/93 and other allied appeals and accordingly the impugned common judgment and award dated 16.6.1996 passed by the learned District Judge, Banaskantha at Palanpur in Land Acquisition Case No.159/90 and other 39 cases awarding additional amount of Rs.8.30 ps. per sq.mtr. for nonirrigated land and Rs.8/= per sq.mtr. for irrigated land is hereby quashed and set aside and it is ordered that the respondents-claimants are entitled for total sum of Rs.7/= per sq.mtr. for their lands with further amount of Rs.6% additional compensation and 30% solatium amount. In view of the Constitutional Bench judgment of Hon'ble Supreme Court in the case of Sunder Vs. Union of India reported in 2001(3) GLH 446 they are also entitled for the interest on solatium amount under Section 23(1-A) of the Land Acquisition Act. They are also entitled to the interest on the total sum of Rs.7/= per sq.mtr. awarded to them and severance charges @9% from the date of taking over possession of their lands upto a period of one year and thereafter interest @15% p.a. till the

amount is paid to them. In view of the judgment of the Hon'ble Supreme Court in case of State of Maharashtra Vs. Babu Govind Gavate reported in 1996 SC 904 followed by this court in case of Dy.General Manager, O.N.G.C. Vs. Chaturji Lalaji reported in 1998 GLR 130 the impugned common judgment and award passed by the learned Judge directing deduction of 5% of Government share of new tenure land is also required to be quashed and set aside and accordingly it is quashed and set aside. All the appeals are allowed accordingly to the aforesaid extent only with proportionate costs.

#. At this stage a request is made by learned counsel Shri Modi for respondent No.1 to direct the appellants to deposit the total amount @Rs.7/= per sq.mtr. as awarded by this court along with other statutory benefits for which the respondents-claimants are entitled including the interest before the trial court as early as possible because it is an acquisition of 1986 and the claimants have not so far got the compensation. In view of the above, the appellants are directed to deposit the compensation amount in all Rs.7/= per sq.mtr. + interest on solatium amount and other amounts awarded by the learned Judge latest by 31.5.2002, before the Trial Court. On depositing the said amount, the trial court shall see to it that the same is disbursed by way of account payee cheque to the respondents-claimants. Accordingly, all the appeals are partly allowed to the aforesaid extent only.

(B.J.Shethna, J.)

(N.G.Nandi, J.)

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